

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

COMMENTS OF THE  
RURAL OKLAHOMA TELECOMMUNICATIONS COMPANIES

Ron Comingdeer  
Comingdeer, Lee & Gooch  
6011 N. Robinson Ave.  
Oklahoma City, Oklahoma 73118  
(405) 848-5534  
Fax (405) 843-5688

## TABLE OF CONTENTS

SUMMARY .....	iii
INTRODUCTION .....	1
I. whether the Commission should adopt a universal service support mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs .....	2
II. whether the Commission should amend the “rural telephone company” definition for high-cost universal service support to consider consolidating multiple study areas within a state .....	7
III. whether the Commission should retain or modify section 54.305 of its rules regarding the amount of universal service support for transferred exchanges .....	8
CONCLUSION.....	9

## SUMMARY

The Rural Oklahoma Telephone Companies applaud the authors of all four proposals for which the Joint Board has requested comments. It is obvious after a careful review of each proposal that the authors and others have spent a significant amount of time analyzing and attempting to set forth plans that they believe addresses the myriad of issues that must be yet addressed by the Joint Board and ultimately by the FCC. As acknowledged by the authors of the proposals, some of the recommendations in the proposals are out side the scope of the referral. The Rural Oklahoma Telecommunications Companies (ROTC) are concerned about the growth of the fund and its continued viability to ensure the objectives of the Telecommunications Act of 1996 (the “Act”). The funding for Universal Services has grown from \$955,000,000 in 1996 to an estimated amount in excess of \$7,000,000,000 in 2005.

The ROTC supports proposals that ensure that universal service support remains “specific, predictable, and sufficient” to ensure that end users in rural, insular and high cost areas continue to have access to universal service. To achieve those goals the ROTC urges the Joint Board to apply the following principles when evaluating the proposals.

1. Rural Consumers should have affordable telecommunications services, comparable in quality and price to urban areas. States are in a better position to determine the affordability of telecommunications services than is the FCC.
2. Funding should be sufficient to provide for critical infrastructure and necessary operating expenses in rural areas.
3. The universal service fund is a scarce national resource. Therefore, supporting multiple carriers is in the public interest only when benefits to the end users exceed cost.
4. The universal service fund should not be used to create uneconomic competition.

5. All carriers receiving support should be held to similar service obligations and regulatory standards.
6. Funding should come from the broadest base of providers and services.
7. Small rural carriers serving less than 100,000 customers do not have the scale or scope economies of larger carriers and reimbursements for universal service should be determined differently.
8. Continue to calculate small rural carriers universal service support on the individual carriers study area embedded cost.
9. Operations under common control within a single state should be treated as a single operation for high cost support.

The objective that all Americans in all regions of the Nation should have access to quality telecommunications at just, reasonable and affordable rates has been the corner stone of telecommunications policy for over 70 years. This industry is a highly capitol intensive industry and as such stability of revenues is essential to ensure end users continue to have access to quality telecommunications and information services. The Act codified the FCC's historical commitment to promote universal service to ensure that all Americans have access to affordable, quality telecommunications services, unfortunately many regulators at both the federal and state level have focused primarily on "creating competition". In many instances, well meaning regulators have used universal service to promote uneconomic competition, at the expense of the rate payers. The ROTC believes now is the time to refocus our attention and make decisions that ensure the long term viability of the critical infrastructure networks of the rural telecommunications providers so that end users in rural, insular, and high cost areas may continue to enjoy services that are enjoyed by end users in urban areas, at reasonably comparable prices. The comments herewith submitted by the ROTC sets out principles that, we believe, should be followed for the benefit of rural end users.

## INTRODUCTION

The Rural Oklahoma Telecommunications Coalition (ROTC)<sup>1</sup> appreciate this opportunity to provide initial comments to the Federal-State Joint Board on Universal Service (Joint Board) request for comments in the Public Notice released on August 17, 2005 in CC Docket No. 96-45.<sup>2</sup> ROTC is an association of rural incumbent local exchange carriers (ILECs) which have been providing telecommunications services to primarily rural customers originally neglected by the Regional Bell Operating Companies and the former GTE. The ROTC Companies, either themselves or through affiliates of the ROTC Companies, operate in more than eight (8) states, providing an array of telecommunications and information services, including but not limited to telecommunications, internet service, video and other broadband services. The ROTC Companies are family owned companies or where people coming together to form telephone cooperatives to initially provide basic service to their customers and members. Each ROTC Company serves rural and high-cost areas within the state of Oklahoma and meets the definition of a rural telephone company contained in 47 U.S.C. §153(37). Each ROTC Company is designated as an eligible telecommunications carrier (ETC) for its service area or areas.

The Joint Board seeks comments on the following proposals:<sup>3</sup>

---

<sup>1</sup> The ROTC member companies are: Atlas Telephone Company, Beggs Telephone Company, Bixby Telephone Company, Canadian Valley Telephone Company, Carnegie Telephone Company, Central Oklahoma Telephone Company, Cherokee Telephone Company, Chickasaw Telephone Company, Cimarron Telephone Company, Cross Telephone Company, Hinton Telephone Company, KanOkla Telephone Association, Lavaca Telephone Company d/b/a Pinnacle Communications, Medicine Park Telephone Company, Oklahoma Western Telephone Company, Oklahoma Telephone and Telegraph Company, Panhandle Telephone Cooperative, Pine Telephone Company, Pioneer Telephone Cooperative, Pottawatomie Telephone Company, Salina-Spavinaw Telephone Company, Shidler Telephone Company, South Central Telephone Company, Southwest Oklahoma Telephone Company, Terral Telephone Company, Valliant Telephone Company.

<sup>2</sup> See *Federal-State Joint Board on Universal Service seeks comment on proposals to modify the Commission's rules relating to high-cost universal service support*, CC Docket No. 96-45, Public Notice, FCC 05J-1 (rel. August 17, 2005).

<sup>3</sup> Id.

- The State Allocation Mechanism (SAM), A Universal Service Reform Package, proposed by Joint Board member Ray Baum (the “SAM”);
- Three Stage Package for Universal Service Reform, proposed by Joint Board Member Billy Jack Gregg (the “Three Stage Proposal”);
- A Holistically Integrated Package, submitted by Commissioner Robert Nelson to Federal-State Joint on Universal Service (the “HIP”), and;
- Universal Service Endpoint Reform Plan, proposed by Joel Shifman, Peter Bluhm and Jeff Pursley (the “USERP”).

The ROTC hereby submits their comments regarding the proposals as each response to the three issues the proposals were intended to address, i.e., (1) whether the Commission should adopt a universal service support mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs; (2) whether the Commission should amend the “rural telephone company” definition for high-cost universal service support to consider consolidating multiple study areas within a state; and (3) whether the Commission should retain or modify section 54.305 of its rules regarding the amount of universal service support for transferred exchanges.<sup>4</sup>

**I. whether the Commission should adopt a universal service support mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs.**

None of the proposals recommended the use of a forward-looking economic cost (FLEC) for the determination of the level of universal service funding a carrier serving rural areas should

---

<sup>4</sup> See *Federal-State Joint Board on Universal Service seeks comments on certain of the Commission's rules relating to high-cost universal service support*, CC Docket No. 96-45, Public Notice, FCC 04J-2 (rel. August 16, 2004).

receive. Two proposals, the Three Stage Proposal and the USERP, specifically endorse the use of embedded cost for rural carriers. While the HIP makes a strong argument for the use of embedded cost by stating that rural carriers are especially vulnerable, facing risks unlike their urban counterparts if the rural carrier does not have a level of certainty that it will continue to receive funding for its infrastructure investment. This can best occur with the use of embedded cost as the method to determine the level of universal service support. To the extent that the USERP suggest the use of the aggregated cost characteristics of all incumbent carrier in the state to determine the support a state is to receive, such recommendation will not insure the carriers who need the support actually receive the support. The statement in the USERP that “This would allow the state commissions to transfer federal support gradually to more needy areas and to implement state USF funds (were necessary) while minimizing rate shock”, confirms the authors own concern that the proposal does not provide universal service support that is specific, predictable, and sufficient in direct conflict with the Act.

In fact the proposal recommends a “Part II” support in an effort to correct shortfalls the author recognizes will occur. If inputs from lower cost high density carriers are used, even on a statewide basis, to determine the amount of universal service funding received by each state for distribution to carriers within its borders then almost assuredly the carriers with the actual need for the funding will be under funded. This is particularly true if there is more than one carrier being funded in a given area. If the goal is to ensure the carriers that need the support receives the support, then the use of those carriers embedded cost is the best method.

The Act at section 254 (e) provides that any carrier that receives universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. This simply means that the dollars received must be

dollars actually spent on the provision, maintenance and upgrading of facilities and services. If embedded costs are the floor and embedded costs are the ceiling, then one can conclude that embedded costs are the adequate standard to achieve the Act's universal service goals.

The ROTC urges the Joint Board to conclude that embedded costs are an effective and efficient mechanism for determining universal service support for rural carriers. Rural ILECs build networks that need to be built to provide services demanded by end users and to comply with government mandates rather than networks that are inefficient and ineffective. If the FCC adopts the use of actual embedded cost as the criteria for carriers to obtain reimbursement for infrastructure investment and expenses necessary to operate the network to make the supported services available to end users in rural, insular and high cost areas and expand the contribution requirements to the broadest base of providers and services, then the universal service programs would be specific, predictable, and sufficient in accordance with the Act.

The USERP proposes the use of FLEC's or "best in class" standards be used to establish limitations on recovery where abuse is "suspected". As discussed previously, FLEC's do not represent the most efficient network operations and therefore should not be used to set a "cap" on reimbursement for infrastructure investment recovery. The ROTC does support correcting and punishing carrier when abuse is found, thereby stopping carriers that are abusing the system, rather than applying a blanket limitation or cap on all carriers. By establishing such limitations, the "good players" are required to expend additional funds to recover needed funding that was denied in an effort to create a "one size fits all" limitation, while the abusing carrier may have no negative effects from the limitations. The ROTC suggests that the top down approach<sup>5</sup>, such as recommended in several of the proposals, is misguided. The ROTC recommends for

consideration the approach that the states first determine the universal service funding need for carriers serving rural areas in the state, based on the embedded cost of the carrier, and then the state provide to the FCC the aggregate universal service funding amounts determined. This process is supported, if not directly by implication in each proposal, by the acknowledgement of the fact that the states are in a better position to ensure that USF funds are distributed to where they are needed, then it only stands to reason that the states are in a better position to determine in the first place the amount of funding each ETC in the state needs. Once the states have reported the needed funding amounts to the FCC, the FCC would then ensure that each carrier that uses the public switch telephone network be required to contribute to USF in an equitable and non discriminatory manner.

If a benchmark is used to determine the level of funding an ETC is to receive, the ROTC supports the use of state wide average rates of urban end users for such calculation. Since the standard in the Act<sup>6</sup> is that rural customers are to receive services that are reasonably comparable to those provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas, the proper criteria must be to establish the benchmark based on urban customers rates. Since the federal law only uses the urban rates as the standard, there is no need to further subdivide the benchmark and or support into urban, suburban and rural zones. This further complicates the formula with any showing of benefits to the end users.

---

<sup>5</sup> The process where the FCC establishes the rules for the states to administer for distribution of universal service support and then, if funding is not adequate, the states must file the gap in order to accomplish the universal service goals of the Act.

<sup>6</sup> Section 254(b) of the Act.

The concept of a hold harmless mechanism to reduce or prevent the risk of rate shock is good; however, the declining hold harmless mechanism described in the USERP proposal does nothing more than shift the FCC's obligations under the Act to the states to fund. This approach discriminates against the end users in rural states where the very customers who are in need of the support are required to pay more than the state benchmark rates to attain universal service required under the Act.

The USERP proposal proposes a separate "portability fund" that would be available only to wireless carriers. The ROTC believes that it is not intended by the Act to use universal service funds for uneconomic competition. Through the United States state commissions are finding that competition is increasing and in fact robust in virtually all regions of the Nation, including rural areas. In fact the recent actions of the FCC<sup>7</sup> indicate that competition has reached a level that ILEC are no longer required to provide certain elements of their networks to competitors. Competition in rural areas is coming from primarily wireless carriers and VoIP providers. When end users have the choice of disconnecting one carriers service to obtain, what the end users believes is a comparable service, it cannot be disputed that there is competition. Every end user in the United States has the choice of telecommunications carriers. In the FCC's Report and Order, released May 8, 1997,<sup>8</sup> the FCC stated that it would rely upon the states monitoring the provision of the supported services to ensure that universal service support is used as intended until competition develops. Competition has developed. At Paragraph 173 of the same Order, the FCC states that the ability of competitors to make decisions to enter local markets based on artificial economic incentives should not occur. This also supports the

---

<sup>7</sup> *In the Matter of The Review of the Section 251 Unbundling obligations of incumbent local exchange carriers*, CC Docket 01-338, Order on Remand, FCC 04-290, ¶ 34, (rel. Feb. 4, 2005)

<sup>8</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, (Rel. May 8, 1997).

proposition that the states are the first line of defense to ensure that universal service funding is used for its intended purpose.

However, the ROTC does not support the continued use of per line support based on the rural telephone company's cost as a basis of funding a second ETC in the rural telephone company's study area. The reimbursement that each ETC receives for its infrastructure investment and cost to operate its network used to provide universal service should be based on the individual ETC's own embedded cost. Taking guidance from the courts, the FCC has recognized the need to provide the right incentives for carriers to invest rationally in the telecommunications market in a way that best allows for innovation and sustainable competition.<sup>9</sup>

To the extent the proposals do not recommend using embedded cost as set forth above, the ROTC opposes those provisions of the proposal.

**II. whether the Commission should amend the "rural telephone company" definition for high-cost universal service support to consider consolidating multiple study areas within a state.**

The ROTC supports the proposition that carriers providers service in rural areas with fewer than 100,000 lines in a state should have their universal service support determined on the carriers own embedded cost, as discussed above. Additionally, carriers serving more than 100,000 lines within a given state should have their universal service support determined pursuant to the FCC's High Cost Model, just as it is for non-rural carriers. Thus, the current definition is no longer used for determination of the level of funds received for universal service support. The ROTC recognizes the immense diversity, cost characteristics, density factors and other variations encountered by all carriers and suggests that a carrier serving more than 100,000

---

<sup>9</sup> *In the Matter of The Review of the Section 251 Unbundling obligations of incumbent local exchange carriers*, CC Docket 01-338, Order on Remand, FCC 04-290, ¶ 2, (rel. Feb. 4, 2005)

lines in a particular state be allowed to demonstrate to USAC funding requirements in addition to what the individual carrier would receive under the FCC's High Cost Model. Such demonstration would be based on the individual carrier's particular circumstances.

**III. whether the Commission should retain or modify section 54.305 of its rules regarding the amount of universal service support for transferred exchanges.**

The ROTC supports the concept that any carrier serving less than 100,000 lines in a given state should have its universal service support determined on the carrier's total unseparated cost within the state and if the acquisition of additional exchanges causes the company to exceed the 100,000 line threshold, then its universal service support would be determined as any other carrier that serves more than 100,000 lines. The ROTC urges the Joint Board to recommend to the FCC to either eliminate or modify the rule. It is not an abuse to allow an acquiring carrier to receive sufficient universal service funds to provide the end users located in a transferred exchange quality telecommunications and information services at just, reasonable and affordable rates. Any additional support for the purchasing carrier of the transferred exchanges should be based on the post-transaction infrastructure investments and increased operating costs incurred to ensure quality telecommunications and information services are available to the end users within the transferred exchanges. The combining of the study areas within each respective state would further ensure proper use of universal service funds. The ROTC does not support a delay in carriers recovery of infrastructure investment and necessary operating expenses associated with transferred exchanges, consistent with the above comments. A five or even a two year waiting period for recovery of infrastructure investments and increased operating expenses necessary to provide universal service to end users in the acquired exchanges would result in harm to end users. The ROTC understands the waiting period to a tool to prevent the selling carrier from

inflating the price and support such end result but are concerned that the waiting period would only serve to harm end users by delaying quality universal service in the acquired exchanges. The ROTC applauds the effort to prevent inflated prices, but don't believe this is the appropriate tool to accomplish the objective.

## **CONCLUSION**

Today, thanks to capital funds available from many sources and universal service support, the ROTC are able to provide to their customers services including, voice grade access to the public switched network, local usage, dual tone multi-frequency signaling, single party service, access to emergency services, access to operator services, access to interexchange service, access to directory assistance and toll limitation for qualifying low income consumers. We believe all of these services are being offered to the rural customers at quality equal to or greater than services received by customers in urban areas and at rates comparable to those paid by their urban counterparts for similar services. In addition, many of the rural companies have chosen to further invest in their communities by providing Internet, DSL, long distance, cable television, and facility leasing services that, in most cases, would not have been available otherwise in the areas served. The investments necessary for the rural companies to provide these services to their rural customers was made based, at least in part, on the reliance on the universal service funds received and those anticipated to be received.

States are in a better position to ensure the USF funds are received to the carriers who need the support to continue to provide universal service to their rural end users. States are close to the end users and carriers and can provide the day-to-day oversight that is necessary to ensure the USF funds are used for the intended purpose and to monitor and minimize abuse. It is vitally important to provide specific, predictable, and sufficient support for carriers. Higher cost and

potentially risky infrastructure investment will not take place at appropriate levels if carriers cannot predict with a level of certainty just which investments will be supported through USF funding. Rural carriers of last resort are especially vulnerable, facing risks unlike their urban counterparts and less regulated competitors. Rural carriers face unique construction/networking challenges with a lower customer density per mile and lower price tolerance, leaving them less margin for financial error.


The Rural Oklahoma Telephone Companies are concerned about the growth of the fund and its continued viability to ensure the objectives of the Telecommunications Act of 1996 as set forth in Section 254(b). As stated above, the ROTC encourages the Joint Board to embrace the following policy principles in its recommendations to the FCC on universal service funding.

1. Rural Consumers should have affordable telecommunications services, comparable in quality and price to urban areas. States are in a better position to determine the affordability of telecommunications services than is the FCC.
2. Funding should be sufficient to provide for critical infrastructure in rural areas.
3. The universal service fund is a scarce national resource. Therefore, supporting multiple carriers is in the public interest only when benefits exceed cost.
4. The universal service fund should not be used to create uneconomic competition.
5. All carriers receiving support should be held to similar service obligations and regulatory standards.
6. Funding should come from the broadest base of providers and services.
7. Small rural carriers serving less than 100,000 customers do not have the scale or scope economies of larger carriers and reimbursements for universal service should be determined differently.
8. Continue to calculate small rural carriers universal service support on the individual carriers study area embedded cost.
9. Operations under common control should be treated as a single operation for high cost support.

The ROTC respectfully requests that the Joint Board adopt the recommendations set forth above. These recommendations are designed to protect the sustainability of the federal Universal Service Fund and bring real benefits, including a sustainable competition, in rural areas throughout our great Nation.

Respectfully submitted this 30th day of September, 2005.

RURAL OKLAHOMA  
TELECOMMUNICATIONS COMPANIES

By:   
\_\_\_\_\_  
Ron Comingdeer  
Comingdeer, Lee & Gooch  
6011 N. Robinson Ave.  
Oklahoma City, Oklahoma 73118

Attorneys for  
Rural Oklahoma Telecommunications Companies